

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6651**

**BILL NUMBER:** HB 1291

**NOTE PREPARED:** Jan 8, 2007

**BILL AMENDED:**

**SUBJECT:** Appointment of Special Prosecutors.

**FIRST AUTHOR:** Rep. Van Haaften

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**     **GENERAL**  
                              **DEDICATED**  
                              **FEDERAL**

**IMPACT:** Local

**Summary of Legislation:** This bill requires a court to appoint a special prosecutor when a previously appointed special prosecutor is unable to continue representing the state.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** This bill addresses the problem of when a special prosecutor is unable to continue representing the state in a criminal case (see *Background on Appointments*). Reasons that special prosecutors may not be able to continue in a case include creation or discovery of their own conflict in a case, death, retirement, or because the prosecutor has been elected to a judgeship. Under current law, if the special prosecutor voluntarily withdraws from the case and a new special prosecutor is not appointed, the statute of limitations on the case may expire and the case in question would be dismissed by the court. If a court is required to appoint a new special prosecutor, then the county would be required to pay \$433 per day if a prosecuting attorney from another county serves as a special prosecutor or \$335 a day if a chief deputy is appointed.

*Background on Appointments* – Under current law, a circuit or superior court is required to appoint a special prosecutor when any person other than the prosecuting attorney or the prosecuting attorney's chief deputy

files a verified petition requesting appointment of a special prosecutor and the prosecuting attorney agrees. The court may also appoint a special prosecutor if one of three circumstances occur:

1. The person files a verified petition requesting the appointment of a special prosecutor and the court finds clear and convincing evidence that the appointment is necessary;
2. If the prosecuting attorney files a petition to request a special prosecutor;
3. An elected public official is a defendant in a criminal proceeding.

*Background on Per Diem Costs* – The annual salary for a full-time prosecuting attorney is \$115,282, while the salary of a chief deputy is \$82,875. Assuming 260 work days a year, the per diem would be about \$433 for a prosecuting attorney and \$335 for a chief deputy.

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts with criminal jurisdiction.

**Information Sources:** Michael Dvorak, St. Joseph County Prosecuting Attorney.

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